Seeking Justice after a Dictatorship: Ethical Dilemmas

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Chapter 1

1. Introduction

Justice has been the subject of discussion in our world since ancient times. The issues of Justice and Human Rights violations have been relevant subjects and still are. Historically, the wars have proved to us the terrible cruelty that can take place between people. The questions of how atrocities can be committed and how to demystify the “evil”, involves a great number of interested researchers from different disciplines in trying to understand such atrocities.

In the case of Argentina, the last dictatorship that begun in 1976, is a clear example of violence and human rights violations. I find it important to present the political development in order to understand how the country got finally involved in the last “Dirty War” that reached a global witnessing, making all familiar with the “victims” and “disappearances”. In the case of South Africa, there was “ethnic cleansing”, during the apartheid era.

The ways the two countries attempt to achieve a just society after their conflicts were different and this can be connected both with their particular political development and shared cultural values.

As I analyze these examples, I will take Rawls principles of justice and his idea of “overlapping consensus” as a basis in addition to the above.

I will also give a brief introduction of the concepts of ‘human rights’, ‘dictator’ and ‘dictatorship’. Originally ‘dictator’ had a positive implication: ‘Dictator’ was the name of the office of an extraordinary Roman magistrate, who was chosen under extraordinary circumstances, and the consuls conferred him extraordinary powers for a limited period of time that was not more than six months. Nowadays, the concept of dictatorship has a negative connotation; this is because it is understood as an undemocratic way of exercising power.

Human rights and human rights violations are essential concepts in this paper. Human Rights can be defined as the basic rights and freedoms to which all humans beings are considered to be entitled: the rights to life, liberty, freedom of thought and
expression, and equal treatment before the law, among others. These rights represent entitlements of the individual or groups, as well as responsibilities of the individual and the government authorities.

I would say that in Argentina there has been an attempt from the current government to tackle with the issue of Justice, and bring it back to the society again. The harmony and respect of Human rights is one of the goals to reach as well. But what are the necessary conditions to achieve justice, after a conflict of immense magnitude? How is possible to reach a collective “consensus”, regarding here the idea of Rawls “overlapping consensus”?

The other case I present in this paper, South Africa, can be seen as a model to follow, the way to achieve justice was through reconciliation and we can say that in that country, it worked.

1.1 Analytical questions

The main question I attempt to answer is 1) what are the requirements to achieve justice in a society, when it goes through a conflict?

To respond that question, I will introduce some ideas: retribution, reparation, and reconciliation. These are seen as different paths for some countries when trying to tackle to the matter of how to reach Justice, regarding the individual and the collective level and how to balance their ethical dilemmas.

The following questions are directly linked with the main question, and I aim to answer them as well.

2) What is justice? And why is it important to achieve it?

In chapter one I will introduce the concept of justice as stated by Rawls and Aristotle. Justice is basically defined as “the first virtue of social institutions, as truth is of systems of thought”. It is important to achieve justice, because then members of a certain community will be able to interact in the present with common shared values and, thus, to deal with the past.

3) Why is it not good to forget? The importance of the “Memory”
In chapter four I will introduce this question. When I ask if is it good to forget, I will relate the psychological aspects of trauma that people who go through a traumatic event suffer, and the implications and impacts these have in their life after the conflict.

4) What about dictator’s punishment?

In chapter four I also attempt to answer this question and utilize the concept of reconciliation as well, as an alternative of seeking justice. I will talk about amnesties, truth commissions, and punishment.

5) Is justice a utopian goal?

This question will be answered regarding a country that went through a conflict and how it then managed to restore the concept of justice.

1.2 Aims and Structure of the Thesis

My aim is to identify the requirements to achieve justice in a society after a conflictive situation, in this case, a dictatorship. I will also clarify why it is important to do so. In my view, this question can be answered appealing first to an intuitive conception of moral justice that may exist both at an individual and at a collective level. The ethical dilemmas both levels have are in relation to the harm done, punishments and how to balance them, limiting, for instance, the punishment in order to accomplish a just and a better society. The main idea here should be how to achieve an “overlapping consensus” that finally leads to reconciliation and justice.

I do acknowledge that the definition of justice has been subject of debate since the ancient times but I will utilize the notion that Rawls gives in this present work. I will also consider the conflicts in the contexts of Argentina and South-Africa. Is important to highlight the relevance of including in this work the concept of human rights and human rights violations, as it is an issue directly related with the conflictive post-dictatorships, considering that is one of the causes justice was seen as disappeared when dealing with the violation of human rights, its consequences and the way to restructure and rebuild a just society again.

The terminology I will use and how the concepts are defined will be clarified while recognizing that some concepts, such as justice, amnesty, reconciliation, reparation, for instance, are under constant debate and change.
In Chapter 1 I will present the analytical questions, aims and structure of the thesis, methodological considerations, and previous research done in the area of justice and reconciliation regarding dictatorships. In Chapter 2, I will provide the theoretical framework, presenting the concepts of human rights, justice, dictator and dictatorship.

In Chapter 3 I will present the NUNCA MAS (Never Again) report in Argentina and make a comparison with TRC in South Africa. I will talk mostly about TRC, punishment and reconciliation.

Furthermore, I will give a chronological account of the political development in the contexts of Argentina and South Africa and I will make a description of the human rights violations, amnesties and pardons. In Chapter 4 I will show the analysis and implications of reconciliation, reparation of the victims and the importance of the memory.

Finally in Chapter 5 I will conclude my thesis, giving some final remarks and guidelines in need of further research and discussions.

1.3 Methodology

Taking as a basis the concept of moral justice, I will argue its ethical and social validity. I will do it comparing different movements of two different contexts: Argentina and South-Africa, I will analyze from the movement NUNCA MAS (Never Again) as a base for the concept of justice from its moral aspect, and compare it then with the problematic of South Africa, taking the TRC, regarding the human rights violations in both places.

I would say that this present study is comparative in the sense that highlights similarities and differences between those two countries mentioned above, which present different aspects in searching for a harmonic and just society and to explore further the ethical dilemmas involved among them. It is inter-disciplinary since I use material from varied academic disciplines in the theoretical discussion (philosophy, psychology, theology, history, for instance). I will focus on the Argentina case: because it is the one I am most familiar with.
1.4 Previous research

There is previous research done about Dictatorships, and how this affected people in a society, Justice and Reconciliation. The works done by Elizabeth Jelin\textsuperscript{1} and Juan Mendez\textsuperscript{2}, are an example.

But there seems to be little research regarding what is the meaning of Justice in relation with dictatorship and what are the conditions required to achieve it after a dictatorship. The TRC and Nunca Mas\textsuperscript{3} (Never Again) reports are examples of what was done regarding justice and reconciliation. We can also add the autobiographic book of Nelson Mandela \textit{Long Walk to Freedom} is an inspiration of how he dedicated his life to the fight against racial oppression in South Africa. He is considered as one of the greatest political and moral leader nowadays. He won a Nobel Peace Prize and the presidency of his country.

\textsuperscript{1} Elizabeth Jelin is a Senior Researcher at CONICET (Consejo Nacional de Investigaciones Cientificas y Tecnicas of the University of Buenos Aires. She obtained a PhD in Sociology at the University of Texas at Austin. She was the Academic Director of the Program on "Collective Memories of Repression: Comparative Perspectives on Democratization Processes in Latin America's Southern Cone" sponsored by the Social Science Research Council, New York, 1998-2002. Professor Jelin is a member of the editorial committees of a number of journals and publications in the field of social sciences.

\textsuperscript{2} Juan Mendez is professor of law and director of the Center for Civil and Human Rights at the Notre Dame Law School, since 1999. He has been a courageous and prominent defender of human rights in many different circumstances for many years. He is a native of Argentina and began his career in the defense of labor rights, but shortly thereafter he turned to the defense of political prisoners against the military dictatorship of his country. That same dictatorship later arrested him, tortured him and detained him for one and a half years during which time Amnesty International adopted him as a prisoner of conscience. Upon his release, he moved to the United States and began his work with Human Rights Watch. He became general counsel of Human Rights Watch in 1994 and later also served as executive director of the Inter-American Institute of Human Rights, a body of the Organization of American States. Juan Mendez came to the U-M February 12 as a guest of the International Institute's Advanced Study Center and offered these remarks as part of the ASC series, "Globalization's Critical Connections."

\textsuperscript{3} http://www.nuncamas.org
Chapter 2

2. Theoretical Framework

In this chapter I will present the theoretical framework I use as a basis of my work. This is necessary in order to understand from which basis I will talk about justice, regarding societies in conflict.

There are various concepts of justice from many authors, but I find it more appropriate to consider Rawls’ concept because of the approach he gives of the concept of justice that has a “neutral” concern in the sense that can be applied in different contexts, such as plural societies, ethnic conflicts, and other kind of conflicts. But the fact that it can have a neutral character does not mean that is neutral regarding morality. That is to say, that Rawls’ conception of justice is a political and a moral one. His ‘neutral’ standpoint seems to be adequate to define the principles of justice that might lead in the application of those principles in the society.

I will consider the two principles of justice Rawls presents in his *Theory of Justice*, and also take into consideration his idea of “overlapping consensus” that I find relevant for this present work.

Furthermore he reflects on Aristotle’s concept of justice, which is useful in this case, as he (Aristotle) talks about another aspect of justice that is relevant here, namely rectificatory justice.

2.1 Rawls principles of Justice and “overlapping consensus”

Rawls offers his notion of justice as fairness, which also entails his ideas of original position, veil of ignorance and the principles of justice, as a picture of a political conception of justice, in the domestic level.

Rawls distinguishes between the *public and the private realm*. The *public realm* refers to those things that citizens for instance could agree, like issues of justice; and in the *private realm*, for example, citizens could be free to think or do as long as they do not harm others, for example, having their own religious beliefs. "Overlapping consensus" is
the area of agreement, shared by all comprehensive doctrines, which represents the agreement that was achieved in the original position.

The principles of justice are chosen in an original position that preserves the equal rights and liberties of individuals and secure each of them a fair share of the social goods that are necessary to pursue their ends, behind a “veil of ignorance”. This “veil of ignorance” deny individuals certain types of information about themselves preventing them from choosing principles for self-interested reasons. Behind this veil of ignorance, persons have no knowledge of their particular circumstances and therefore cannot select principles that would give them an unfair advantage. An individual behind the veil of ignorance does not know “his place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like”\(^4\).

This notion of justice states the following principles:

First principle: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty of others.

Second principle: social and economic inequalities are to be set so that both are logically expected to be to everyone’s advantage, and attached to positions and offices open to all\(^5\).

These principles, according to Rawls, apply to the basic structure of the society by regulating the assignment of rights and duties and controlling the distribution of social and economic advantages. Thus, the first principle should be applied to one sector of the social structure and the second to the other. These aspects of the social system define and secure the equal liberties of citizenship and specify and establish social and economic inequalities, as well. The basic liberties that Rawls states are “political liberty together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law”\(^6\).

These liberties are all essential to be equal by the first principle; all citizens of a just society must have the same basic rights.

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\(^4\) Rawls, J., 1971, p.118

\(^5\) Ibid. p.53

\(^6\) Ibid. p.53
The second principle concerns the distribution of income and wealth and the design of organizations that make use of differences in authority and responsibility. Thus, “the distribution of wealth and income need not be equal, it must be to everyone’s advantage and at the same time, positions of authority and responsibility must be accessible to all”\(^7\).

In this work I will focus on the first principle, as regards to the basic rights people should have to live in a solidary and just society.

Those principles are general, so also applicable to varied societies, and they can be recognized intuitively by the individuals who live in them. Individuals should start with equal rights and their societies should not give an undeserved advantage to some and an equally undeserved disadvantage to others.

After all, only to establish the principles of justice is not enough to have a ‘just’ society. A society needs laws and rules that citizens should apply in concrete situations that are interpreted by judges and public bodies according to the specific case.

The principles that should govern the basic structure of a just or well-ordered society are principles that would be selected by rational individuals in specially circumstances called the “original position”. For Rawls, a society is well ordered when 1) its members know and agree to the same principles of social justice and 2) the basic institutions of society generally satisfy and are widely known to satisfy these principles\(^8\).

Rawls’ conception of justice is supported by what he called “overlapping consensus”. The idea of an “overlapping consensus” as he stated, is not established only on self or group interest, it enables us to understand how a constitutional regime characterized by the fact of pluralism might, despite its deep divisions, achieve stability and social unity by the public recognition of a reasonable political conception of justice. This means that is supported by a consensus that includes the opposing religious, philosophical and moral doctrines. This overlapping consensus is not a mere \textit{modus vivendi}\(^9\).

Rawls argues that justice as fairness should not to be interpreted as a Hobbesian \textit{modus vivendi}; it has a moral element, serving as a political agreement between citizens viewed as free and equal persons. The importance that social unity in a democracy has

\(^7\) Rawls, J., 1971, p.61
\(^8\) Ibid. p.397
\(^9\) Rawls, J., 1987, p.430-431
“cannot rest on a shared conception of the meaning, value and purpose of human life”\(^\text{10}\). This does not entail that as a result social unity should rest exclusively on a convergence of self and group interests. It permits that the opportunity of a stable social unity can be protected by an overlapping consensus on a reasonable political conception of justice. He noted two aspects of a political conception of justice, first, that it is organized to affect to the basic structure of society, and second, that it does not emerge from any general and comprehensive doctrine. An “overlapping consensus” is quite different from a *modus vivendi* in that the object of consensus, the political conception if justice, is itself a moral conception, and as it is affirmed on moral views, contains conceptions of society and of citizens as persons, as well as principles of justice.

Furthermore, I would like to highlight that Rawls pointed out that conflicts with political values are much decreased when the political conception is supported by an overlapping consensus\(^\text{11}\), because we can relate it with any conflict that a society might suffer, and this is a central point from which I talk about reconciliation as a path to reach a just society. Thus, I believe that in order to reach justice through reconciliation it is necessary to take into account the concept of “overlapping consensus” stated by Rawls.

In the overlapping consensus, that has a moral foundation two or more comprehensive doctrines may start from incompatible premises but even achieve the same conclusions regarding moral and legal issues. Therefore, agreement based on overlapping consensus might be more solid than agreement based only on *modus vivendi*. Hence, citizens that possess plurality of moral and religious beliefs could nevertheless agree on the basic principles that are necessary for a society to satisfy its demands of justice.

Aristotle presents two contrasting types of justice. One type of justice, *distributive justice*, is concerned with the distribution of goods or honors that are divided among all who have a share in some public organization. In cases of distributive justice, things must be distributed equally. Equal distribution must be determined carefully. Things should be distributed so that individuals get their share based on merit. Thus, if things are to be

\(^{10}\) Ibid.p.422

\(^{11}\) Ibid.p.439
divided based on some property, each individual should receive a portion proportional to their possession of that property. The other type of justice is *rectificatory justice*, rectifications of injuries\textsuperscript{12}.

The two types of justice differ in the way they interpret equality. Distributive justice divides a benefit in accordance with some criterion that compares the merits of the individuals. Rectificatory or corrective justice, on the contrary, marks the preservation and restoration of the hypothetical equality with which the individuals had before one harmed the other. This is ideally done by “taking from the perpetrator” the “gain” or an equivalent which he took from the victim and “returning” it. But Aristotle did not discuss the problem when for instance there is murder and the victim cannot be compensated\textsuperscript{13}.

I will develop further the idea of retributive justice in Chapter four.

### 2.2 Human Rights concept

In this section I will explore some ideas of human rights concepts.

Following Michael Freeman, the concept of human rights involves two different and complementary kinds of approaches; on one hand the *theoretical* issues, about the requisites of legitimate government and the nature of the good life. On the other hand, the *practical* dimension, and we have for instance the impediment of political murders, “disappearances”, torture and unjust imprisonment\textsuperscript{14}.

There is a space between both approaches that can be linked by agreement. How this can be done? According to Michael Freeman, it is possible to do it if most of the relevant people agree on the principles and practices of human rights. As Jack Donnelly pointed out, there is not only the existence of human rights consensus, but also an enumeration of rights in international law\textsuperscript{15}. Indeed, the weakness of the practical consensus, for instance human rights violations, is what legitimates the demand to the theoretical one. Hence, what all moralities might seek to protect are certain basic rights. Richard Rorty pointed out that human rights cause needs passion and courage, not reason and theory. But I believe that human rights needs both, because reason and theory also

\textsuperscript{12} Rowe, C., and Broadie, S., 2002, pp.35-36
\textsuperscript{13} Ibid. p. 36
\textsuperscript{14} Freeman, Michael, 1994, p. 491
\textsuperscript{15} Cited by Freeman, Michael, 1994, p. 492
can provide a base to act with courage and passion when applying human rights. And however, if we apply human rights without reason, that is when violation those rights is likely to occur. Some authors find that there is not a strong consensus among different theories regarding human rights, but we all agree that is better to have them than not have them.

The document that is considered as foundational of Human Rights movement is the Universal Declaration of Human Rights from 1948, which article 1 states: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.

But it seems that sometimes, as Dworkin argues in his book Taking Rights Seriously, that if governments “do not take rights seriously, then it does not take law seriously either”\(^\text{16}\).

It is plausible thus, to argue that most rights ultimately derive from fundamental rights to life, liberty and equality. The general idea that each person by nature has a right to live is shared by many philosophers. We can say that it is a government responsibility to protect human rights, prohibit murder, and try to arrest, condemn or punish anyone responsible of this crime. Thus, the right to life can be considered as being universal in the sense that everyone has it, irrelevant of sex, socioeconomic class or race\(^\text{17}\).

The concept of a human right has certain central elements that any plausible understanding of human rights must incorporate, as Pogge indicated. According to him, first, human rights states **ultimate moral** concerns: Persons have a moral obligation to respect human rights. Second, human rights express **weighty** moral concerns, which normally supersede other normative considerations. Third, these moral concerns are centered on **human beings**, as all of them have human rights and the special moral status associated with them. Fourth, regarding these moral concerns, all human beings have **equal status**: They have exactly the same human rights and the moral connotation and achievement of these rights does not change with whose human rights is at stake. Fifth, human rights express moral apprehensions that are **unrestricted**, i.e., they have to be respected by all human agents regardless of their particular epoch, culture, religion, moral

\(^{16}\) Dworkin, R., 1978, p.205.

tradition or philosophy. Sixth, these moral concerns are *broadly sharable*, i.e., capable of being understood and appreciated by persons from different epochs and cultures as well as by adherents of a variety of different religions, moral traditions and philosophies\(^{18}\).

This definition by Thomas Pogge holds the most important points to define Human Rights. What is lacking in this definition and I can see that he took for granted is the right to life, that is the basic to be respect and from which all should have its starting point when talking about human rights.

As for the statute that declares moral principles in a normative way, I would say that it is essential to have it in an international and national community, but also is important to highlight that they should transcend the traditions, the cultural and historical circumstances, the governments and juridical systems, as Pogge pointed out.

### 2.3 Defining Justice

The idea of justice has been discussed for thousands of years and has been one of the foremost questions of philosophy and social thinking, as well. But what does the term justice mean? When trying to define justice we can find several concepts of it, and disagreements’ concerning what justice is.

As stated by Plato and by Aristotle after him, justice was considered as “the essential virtue” for the “social animals” that we are, living together in vast communities, cities and nation-states. The original meaning of justice in the Old Testament and the *Iliad* is tied up more with punishment, retribution and revenge.

However, the meanings of justice are most of the time linked with the term “fairness”. In social and political ethics, the idea of justice does not cover the entire field, but is merely one virtue or ideal among some others. But hitherto as far as society is concerned, justice is the most basic virtue and so might be identified as the main one\(^{19}\).

Philosophical analysis regarding the concept of justice can help to elucidate the ideas implicated in the concept that John Rawls, who is considered a very important contributor to philosophical reflection on justice, gives. He developed a conception of justice as fairness in his work *A Theory of Justice*.

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\(^{18}\) Pogge, Thomas, 1999, p.46

\(^{19}\) Raphael, D., 2003, p.1
Rawls stated that “Justice is the first virtue of social institutions, as truth is of systems of thought”\textsuperscript{20}. That is to say that justice is over other moral values a society might seek to achieve, according to him.

He pointed out that the primary subject of justice is the basic structure of society, to be precise, how the main social institutions distribute fundamental rights and duties determining therefore the distribution of advantages from social mutual assist. He also acknowledge that “Those who hold different conceptions of justice can then still all agree that institutions are just when no arbitrary distinctions are made between persons in the assigning of basic rights and duties and when the rules determine a proper balance between competing claims to the advantages of social life”\textsuperscript{21}.

Hence, the justice of a social system depends fundamentally on how essential rights and duties are assigned and on the economic opportunities and social conditions of the different sectors of the society as well\textsuperscript{22}.

2.4 Dictator and Dictatorship conceptions

In this section I will introduce the two concepts of ‘dictator’ and ‘dictatorship’ that are interrelated with each other. Dictatorship is a concept that has its origin from classical ancient times. Originally it had a positive implication, ‘Dictator’ was the name of the office of an extraordinary Roman magistrate, which was introduced in about 500 BC and lasted until the end of the third century AD. The extraordinary circumstances where the dictator was chosen were the conduct of a war or the suppression of a rebellion, for instance, and because of the especial situation the consuls conferred him extraordinary powers in a limited period of time that was not more than six months\textsuperscript{23}.

Nowadays, the concept of dictatorship has a negative connotation; this is because it is understood as an undemocratic way of exercising power.

Dictatorships commonly correspond to a cycle that follows similar stages. They appear in general, after a period of chaos, depression and governmental collapse, in which prevails economic insecurity, class conflict and uncertainty, institutional

\textsuperscript{20} Rawls, 1971, p.3
\textsuperscript{21} Rawls, 1987, p.5
\textsuperscript{22} Rawls, 1971, p.7
\textsuperscript{23} Bobbio, N., 1989, pp.159-160
disorganization, and loss of confidence in current governmental agencies. With this perspective of commotion and confusion, people look for order, prosperity, stability, they look for hope. A standpoint like that set the stage for some of the dictatorships that appeared in history from seventh century till now\textsuperscript{24}.

Each dictator has his own tactics to gain more power, economic strength and control. Order is promised and they manage to gain public sentiment in favor of them. The dictator makes his thrust at power when this moment arrives. This moment can take the form of a \textit{coup d’ état} that is commonly taken over by force by military officers\textsuperscript{25}.

In Latin America unstable constitutional regimes give the path for re-appearing dictatorships in \textit{coup} after \textit{coup}, and their success depends upon the support of armed forces.

A dictatorship is also characterized by crashing rival people or those who have opposite ideas. They set a process of “purging” the nation, as they usually call it taking possession of it, especially the population. This purging consists of destroying or harming what's left of the old political system that might interfere with the new they want to impose. By doing this, they gain control of the parliament and the court, appropriate the treasure, control taxation system and control all important economical processes, relations and institutions. Among other things, they take over and reconstruct the army, and eliminate all opposition individuals or groups that might interfere in their action: by imprisonment, torture, exile and execution. Consequently, they restrain the population by terrorist tactics, seek to instill fear in them, force loyalty to the principles and leaders of the dictatorship, take over all control of the means of information and communication, and introduce the dictator’s henchmen in command of all aspects of life\textsuperscript{26}.

It is important to highlight the process of \textit{indoctrination} that takes place during a dictatorship. This process is made gradually and systematically by propaganda of all kinds and by education, especially directed towards children and youth, to shape their minds according to the dictator’s ideas. And as this German said: “The real triumph of dictatorship is not to have silenced their foes, but to make them sing their praises”\textsuperscript{27}. One

\textsuperscript{24} Hertzler, J.O., 1939, pp.303-304
\textsuperscript{25} Ibid., p.305
\textsuperscript{26} Hertzler, J.O., 1939, p.306
\textsuperscript{27} F.M. Marx, 1935, p.211. In: Hertzler, J.O., 1939, p.306
of the purposes is to discourage the opposition and unify their followers, taking care of
them, by giving jobs for instance. Every social activity, including religion, is controlled
by them; they provided plenty of festivals, ceremonies, processions, entertainments,
military assessment, gaining to distract people’s attention from their dissents. However, a
huge mass of history’s dictatorships have finally gone into a period of decline. This
decline is caused by for instance, excesses of terrorism, violations of rights\textsuperscript{28}, incapacity
of the population to participate in public affairs, intervention with normal activities, and
incapability of the dictator to meet his promises.

This kind of behavior from the military weakens the dictatorship, and as they start
to lose financial and moral support, internal dissensions appear and the number of
opposing external forces grows. Consequently, they succumb. Some dictatorships were
dissolved by the death of the dictator in office, others for the causes we saw above\textsuperscript{29}.

\textsuperscript{28} See the case of violation of human rights in Argentina, presented in sections 3.2 and 3.4
\textsuperscript{29} Hertzler, J.O., 1939, pp.307-309
Chapter 3

3. Overview of the situation in Argentina in comparison with South Africa

3.1 Argentina’s Political Development

To understand in a broad way how justice is considered and works in Argentina, especially after the post-dictatorship of 1976, I will first introduce briefly its political development. I would say that in Argentina and perhaps Latin America we acknowledge a historic transition to democracy that is done in steps and in stages. There is an obvious need for reconciliation and for looking forward for justice. I will later talk about Human Rights violations, amnesty and Truth Commissions, as well as how all this is understood in Argentina and South Africa.

Argentina is a country that has its origins in the Spanish colonial empire. The Indians who lived there were few in number, and was not a settled native population, but were nomadic. In the colonial period, there was not a dynamic economy. The coastal region of Buenos Aires was not so active yet, but the location of this city was situated to become a great port later on30.

The independence was not achieved until 1820. There were two competing groups which came from different regions of the country. One group was conformed by the “Unitarians” and the other from the “Federals”. The main difference between them is that the first one tended to nationalize the port city of Buenos Aires making it into a base from which reduce the provincial barriers and open the country to international commerce. The second group, were from the interior. They agree to nationalize the city of Buenos Aires but also wanted to maintain provincial autonomy. The conflict among these groups lasted until 1840, when Juan Manuel de Rosas, a famous dictator in Argentina history, wanted to rule the country, pursuing his goal with policies favoring the estancieros (ranch owners) consolidating the aristocracy. He expanded the power of Buenos Aires province over the

30 Skidmore and Smith, 2005, p.69
country, structuring a nation on the principle of federalism. During Rosas time, many Argentine intellectuals such as Domingo Sarmiento and Esteban Echevarria took off the repressive regime.

What these intellectuals tried to capture was the control of Argentina and turn it onto the course of liberal representative government. When in 1852 Rosas fell, they got their opportunity. In 1862 Mitre was new president and launched to unify the country. He was followed in the presidency by D. Sarmiento. He strongly believed in North American style public education and urged Argentines to follow that model. The third liberal president was Nicolas Avellaneda, in his term that was from 1874 until 1880, Argentina carried out its main territorial conquest, the “Indians wars”.

The new liberal’s leader was now Roca (1880-1886) and (1898-1904) hero of the “Conquest of the Desert”.

In 1892, the Radical Party (UCR) was created by some intransigent leaders in attempt to end an armed revolt. Led first by Leandro Alem and for Hipolito Yrigoyen (who was elected president in 1916 and re-elected in 1928), the Radicals maintain their political power.

Between 1857 and 1930 Argentina received an immigration of 3.5 million, of those immigrants 46 percent were Italian and 32 percent were Spanish. Thus, the fast economic growth of the period 1880-1914, had profound social implications, as well. This means that the gap between poor and rich was set as gauchos and wage labour on the bottom and aristocrat elite on top. In 1930, the country suffered the Great Depression, becoming economically dependent on the industrialized centre of the world-system. However, was hit not as hard as other countries of Latin America.

The fact that Argentina experienced a remarkable economic growth, was because also of the flood of immigrants. Because of this, the sense of nationality was not clearly defined. This fact is essential as is one of the main points that are link with the weak national identity and afterwards, moral shared values.

A new generation of nationalist writers in the early twenty century, such as Ricardo Rojas, pointed to the Indian and soil as the true origins of Argentine nationality.

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31 Ibid. p.70
32 Ibid. p.71
33 Ibid. pp.72-73
The classic poem book about the gaucho34, *Martin Fierro*, was taken as a genuine basis of inspiration for the national consciousness.

Military governments ruled from time to time in Argentina since 1930. Argentina was directed by twenty-five different presidents during the 60 years between 1930 and 1990. Sixteen of them were generals of the army. During this period, six coups d’ état or de facto governments, by the armed forces took place against governments elected by the people and 21 years of military dictatorships.

One characteristic was that the longer the military existed as a political force, their privileges grew along them: like being tried only by military courts, whatever crime they had committed, for instance35.

**Military coups**

As I said before, six constitutional governments were removed by the armed forces in 1930, 1943, 1955, 1962, 1966, and 1976. However, the military dictatorships also demonstrated completely their incapability of establishing stable political regimes. Argentina was governed based on a model of pattern of collective pressure implemented by the major social and political actors – urban and rural capitalists, the unions, the military, and the Catholic Church – against the in office government. One of the upshots of this style of government was the “union” of economics and politics. Briefly, the continuity of the basic arrangements of Argentina’s political economy allowed the country to go through persistent governmental instability and of strong antagonism created between the main parties during the twentieth century. Hence, the major economic and political actors never showed the minimum predisposition to cooperate on public policies, and that inflexibility was shared by the major parties, the Radicals and the Peronists36.

The Radical Party, or Union Civica Radical (UCR), was founded in 1890 and won the presidency twenty-six years later in Argentina’s first democratic elections beneath the new Saenz Peña law. Therefore, the UCR became the icon of the movement from the

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34 Gaucho: South American cowboy.
35 Bartolomei, Maria Luisa, 1991, p.28


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oligarchic system to democracy. Nevertheless, as a consequence of both weaknesses and antidemocratic behavior of its conservative adversaries, Radicalism failed in strengthening democratic rule in Argentina. Hipolito Yrigoyen was deposed by the military during his second presidential term which had started in 1928. Consecutively, thirty years later, between 1945 and 1950, the Peronists uphold essential changes in social relations (for instance, they succeed in changing social hierarchies both in the countryside and in the largest cities, principally by lowering the social gap between bosses and workers) that lead to a profound revolution in Argentine political culture. Nevertheless, as what happened before with the Radicals, the first Peronist government was overthrow by the military in 1955 when it was at the top of its electoral power. Both parties aspired to monopolize the political representation of the “people,” of the popular and middle sectors. As a consequence of the persistent strength of both political subcultures, Argentina failed in the creation of a party system\(^{37}\).

Even though the Constitution called for a six-year term, the average life of a presidential administration did not exceed two years. Eight of those 21 administrations began with an election, but two of the elections were patently fraudulent\(^ {38}\).

Uriburu’s successor was Justo in 1932. After him, in 1937 Roberto Ortiz, but his health forced him to leave in 1940. In 1943, General Pablo Ramirez (de facto); 1944 General Edelmiro Farrel (de facto); 1946 General Juan D. Peron; 1952 General Domingo Peron. Ambitious and outgoing man of middle-class origin ascended to the rank of colonel in the Argentine army. He became secretary of labor, encouraged after that, the support of industrial workers. This partly influenced that he later became minister of war and vice president. In 1946 he won the presidential election with a 54 percent majority. During his period of governance, he put into practice the corporatist principles of the GOU (Grupo Obra de Unificacion or Grupo de Oficiales Unidos). According to this Group, Argentina was organized into functional groups: industrialist, farmers and workers, who became his most important political ally\(^{39}\). He also reduced the foreign influence in the economy, nationalizing the railways, Telephone Company, and dock

\(^{39}\) Skidmore and Smith, 2005, p.85-86
facilities. And in year 1947 paid the entire foreign debt. Eva Peron\textsuperscript{40} played an essential role in Argentina’s politics. Her charisma harmonizes with her husband’s and they together succeeded rapidly. She was identified by many people in the country as the heart of Peronism. She set up her own foundation “Evita” In 1951, Peron was re-elected with the 67 percent of the votes (for that he changed the Argentine Constitution, as it prohibited reelection of the president, thus, the Constitution was modified), represented principally by women voters.

But was not all roses; their governments also had authoritarian’s actions, such as the expropriation in 1951 of \textit{La Prensa}, the foremost opposition newspaper. That year, in running for reelection, Peron wanted Evita to be his vice-presidential candidate. But military refused that Evita could be their commander-in-chief, and she was disappointed about the decision. She was ill and fought intensely until she died of cancer at the age of thirty-three, becoming a powerful myth in Argentina. Peron started to have opponents within the army, and in 1951 they attempted a coup against him. He easily suppressed them, but the seed of dissatisfaction remained alive\textsuperscript{41}.

In 1955 Peron was pressured by the military to resign or face a civil war. He left, but his exodus was indicative that neither Peron nor Peronism was finish. General Lonardi was the new president, but was immediately defeated by military and Pedro Aramburu (\textit{de facto}) was installed as the new provisional president.

On the economic facade the military governments of 1955-58 found a lethargic economy. The anti-Peronist civilian politicians were deeply divided. On one hand, the “Popular Radicals” (UCR del Pueblo) led by Ricardo Balbin, and on the other hand, the “Intransigent Radicals” (UCRI) led by Arturo Frondizi. The latest won the elections in 1958. On March 1962, the military held power again, and Senate President Jose M.Guido

\textsuperscript{40} Eva Duarte de Peron was Peron’s wife. “Eva Peron is an icon in Argentina who fought for women’s rights. She turned to the working-class women; and she also came from a lower class background, the masses were identified with her, they felt she was able to understand them. Eva was rejected by the women of the oligarchy (especially the “Beneficent Society”) because she was not upper class. But, Evita’s effect on the condition of women in Argentina and on their political life was decisive and middle-class feminists had entered politics because of her. Thanks to Eva, in 1947, Argentine women were granted the right to vote and in 1949 Woman’s Branch (Rama Femenina) of Peronista Party was formed and run also by Eva Peron”. In: Medina, Ayeray, 2005, p.9

\textsuperscript{41} Skidmore and Smith, 2005, pp.87-88
was the president. The military decided to withdraw the election results of 1962 and hold a new round of elections in July 1963. The new president was Arturo Illia.

The increase of political and economic instability damaged the whole society. Consequently, the use of violence and manipulation became the only methods left to resolve conflicts. Over again the government deficit was out of control and Illia was threw away from the Casa Rosada in 1966. This was another military coup, where General Juan Carlos Ongania wanted to establish a new type of regime.

3.2 Military failure: The “Dirty War” and The Mothers of Plaza de Mayo

With the death of Peron, and the new president, Isabel, his last wife, the country went to its ruin.

In 1975, Argentina was destroyed by economic conflict, the inflation increase rapidly to 335 percent and the exports were catastrophic. The guerrillas continued their attacks on the police and military. There were terrorists from the right and from the left.

Thus, the fact that the military’s came back to power can be said was because of the political crisis and divisions within Peronism and in the Peronist laxity of the economy, which had negative rate of growth during 1975\(^{42}\).

The economic crisis combined with the political one, resulted in Isabel Peron’s\(^{43}\) incapability to govern. Hence, tackled with a fragile and unstable government and a fast deteriorating economy, the military felt forced to interfere. But instead of peace and stability, the Military Process brought political, economic instability and war that lead into a process of national destruction\(^{44}\).

A military junta under General Jorge Videla, who was Commander-in-Chief of the Army, held power. He dissolved the Congress, and replaced a number of judges during the military government. This dictatorship continued under four different generals, Jorge Videla, Roberto Eduardo Viola, Leopoldo Galtieri, and Reynaldo Bignone, until it fell in 1983, after suffering significant losses in the Malvinas (Falklands) War with Great

\(^{42}\) Hodges, D., 1988, p.178

\(^{43}\) Isabel Peron was Peron’s last wife, who took the Presidency after Peron’s death.

\(^{44}\) Hodges, D., 1988, p.199
Britain. The junta promised to exterminate terrorism and in so doing remove some actors from the political scenery. They affirmed Argentina’s alliance with the “Western and Christian World”, and in keeping with theses principles, they promised to “reeducate” the populace by emphasizing values of “morality, uprightness and efficiency”.

The crusade against subversion became notorious for its violation of human rights. Between March 1976 and the end of 1978, the Military Process was responsible for some 30,000 “disappearances” and many cases of torture, kidnapping and murders of thousands of educated middle-class men and women and also working-class people from factories, offices and farms. Around 500 journalists were obliged to abandon the country and many others were or detained or disappeared. The detentions were carried out in a slipshod way without due process and several hundred of clandestine detention centers were broaden.

They did not only violate human rights but also misbehaved on property rights, as there was an allowance to rob as well as to kill. A system of state terror and violence was put into practice.

The country was very different before the military juntas; it could be pictured as stylish, with an affluent middle class that supported the arts, music, theaters and cinemas. But all this cultural life changed dramatically after the coup. All were limited by political and moral censor-ships. Political Science, sociology, psychology and even architecture were all believe to be dangerous because of their dependence on foreign influences and had been privileged by left-wing students and academics, as well. The military sought to create an orthodox culture, based on simple patriotic values, family and Christianity, in a rigid way. The harassment of journalists, the use of terror to silence writers, musicians and teachers, and the well-known black-listing of people all was experienced similar to what happened in Nazi Germany in the Thirties.

Among the principal forms of resistance that were trade unions and youth, a group of women aged between forty and sixty, added against the military regime. Were the mothers of the “disappeared”, who had and have a public meeting every Thursday afternoon, in the Plaza de Mayo opposite the Government House, to express

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45 Skidmore and Smith, 2005, p.99
46 Bartolomei, Maria Luisa, 1991, p.26
47 Ibid., p.24
their anguish, until now. That is the reason they are called “Madres of Plaza de Mayo”, identifiable by their white kerchiefs. They first appeared in April 1977, informally organized; they required pressuring the government to investigate the thousands of cases of disappearances and to liberate those who were illegally detained without charges. The Mothers had the support of human rights groups in their call for their sons’ and daughters’ reappearance. Subsequently, The Mothers were joined by the Grandmothers of the Plaza de Mayo, a group that obtained its own identity in 1978. Their protest was based on their condition of suffering mothers, therefore was not easy for the military government to repress them. Thus, with the purpose of reject the legitimacy of The Mother’s claims, military officers called them las locas (the madwomen) and ridiculed their anguish “by arguing that they had been driven mad because their misbehaved children left the country for their subversive activities”48.

By the end of 1977, the Mothers had gathered a list of 800 “disappearances”49. The number of documented cases rose to 2,500 by May 1978 and to some 4,000 in September 1979. The government retaliated brutally to the first published list in 1977. Twelve mothers, relatives and two French nuns in a supporting role were kidnapped and tortured in the ESMA (Navy Engineering School). They have still to reappear50.

The Mothers’ role in justice is essential in Argentina, those brave women fought against the military regime towards the search of a just society, showing the entire world what was happening in the country and claiming for the reappearance of their children. Their labor was not easy, they risked their lives doing that, but they are not scared, they continue and still struggle for justice.

3.3 The Full Stop, Due Obedience and the Pardon’s Laws

When President Raul Alfonsin promulgated the Due Obedience Law on June 1987, the effect of it was to grant amnesty from prosecution to 300 military officers. This law stated that military that had tortured and killed citizens could not be prosecuted if they were acting under orders.

49 For more information, enter into the official web page: www.madres.org
50 Hodges, D., 1988, pp.206-207.
Amnesty International has continually expressed its worry about the incompatibility of Argentina's Full Stop Law, Law Nº 23,492 of 12 December 1986, and Due Obedience Law, Law Nº 23,521 of 4 June 1987, with international law and, in particular, with Argentina's obligation to bring to justice and punish the perpetrators of gross violations of human rights. The Due Obedience Law stated that “members of the security forces who had tortured and killed citizens could no be prosecuted if were acting under orders”\(^{51}\). Hence, the effect of the law was to grant amnesty from prosecution to 300 military officers. This fact caused negative reactions among most parts of the Argentinean society.

Until now these laws have been used to obstruct the investigation of thousands of cases of 'disappearance', torture and extrajudicial execution committed between 1976 and 1983 when the military governments were in power.

Law Nº 23,492, the Full Stop Law, and Law Nº 23,521, the Due Obedience Law, which had been approved by the Argentinean Congress in 1986 and 1987 respectively, were repealed in March 1998. However, their abolish was interpreted as not having retrospective effect and cases of human rights violations committed under the military governments therefore continue to be covered by them\(^{52}\).

Federal Judge Gabriel Cavallo declared the Full Stop and Due Obedience Laws to be unconstitutional and null and void. This ruling was confirmed by Court II of the Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal de Buenos Aires, National Chamber of Appeals for Criminal and Correctional Matters for Buenos Aires. The judgment handed down by Judge Gabriel Cavallo has been before the Supreme Court of Justice since June 2002 and a decision is expected shortly.

Hence, the strong need that Argentine society had to see justice done was then frustrated when the Government of President Raúl Alfonsín ratified the Full Stop and Due Obedience Laws.

But afterwards, President Carlos Menem, in 1989, granted a Pardon to members of the military who were involved in human rights violations, as well as to those involved in military revolts and mutinies during Alfonsín’s term. About 280 persons were pardoned. Menem justified his action saying that there was a need to “heal the wounds of

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\(^{51}\) Supreme Court of Argentina, 22 June 1987, In: Crawford Kathryn Lee, 1990, p.1

the past” and to create a sense of “national reconciliation”. Yet, the Armed Forces far from showing any signs of repentance or recognition of wrongdoing have interpreted these de facto amnesties as a vindication of their role in the anti-subversion campaign in which 30,000 people were killed or “disappeared”\(^{53}\).

Definitely, these laws are the evidence that the search for truth and justice must continue in Argentina.

Finally, I would emphasize that International law considers torture, summary, extrajudicial and arbitrary executions and disappearances, among others, to be gross violations of human rights that cannot be subject to any type of measure that would impede investigation and prevent those responsible from being punished.

3.3.1 Questions of Amnesty

The questions of amnesty or pardons for a past behavior took a central function in the background and the discussions of the TRC. Therefore, people who are granted amnesty cannot be prosecuted for what they wronged and the families of victims and victims per se cannot take legal actions\(^{54}\).

Amnesty International plays a controversial role and is most of the time a focus for critics because of its relation to impunity. However, according to Juan Mendez, Amnesty International twenty years ago had a different position than it has nowadays. At that time, Amnesty had a regulation of not examining trials for human rights violations. That has changed, and Amnesty fights strongly against impunity\(^{55}\).

It is necessary to highlight that the victims and people in general who were not directly affected by the conflict as well, show varied feelings regarding the traumatic event. Some agree that amnesty should be granted to the perpetrators, others ask for punishment. The question here is: how to balance such different positions?

In 1976 the military held power in response to political and economic violence in Argentina. Between that year and 1983, they carried out a battle against those who were considered subversives and terrorists. The armed forces elaborated a legal framework to


\(^{55}\) Mendez, Juan, 2004, p, 1
conduct that campaign by approving statutes that fit the executive and legislative powers.\textsuperscript{56}

In the meantime of the \textquoteleft Proceso', (military dictatorship), there was no investigation of the disappearances. On the contrary, each denounce was denied by the authorities alleging that no kidnap had occurred, and they certainly did not investigate the cases.

Moreover, torturers or killers are allowed to continue in public office then the process of democratizing state institutions may be put at risk. Public trust in these institutions will be reduced and the state’s commitment to a clean, responsible and open government will be questioned. Therefore, there was an absolute opposition to the modus operandi of amnesty which has failed in almost every country in democratic transition. This was the case in Chile, Argentina, Uruguay, El Salvador, Brazil and both Guatemala and South Africa. Richard Wilson argues that:

Human rights organizations have generally failed in blocking amnesty, since the ‘justice in transition question’ is one of the issues where leaders in the conflict are most likely to reach a deal over the heads of ordinary people. This is not to say there is a burning mass desire for justice and revenge. In my discussions with more than 100 victims of violations in South Africa during 1995 to 1997, I encountered a variety of perspectives on justice and reconciliation: from a blanket Christian forgiveness, through a more measured acceptance of abandoning prosecutions in the interests of political stability, to a deep need for retribution, including the death penalty for perpetrators.\textsuperscript{57}

To sum up, I would say that consequently, general amnesty, as had occurred in many Latin American cases (like Argentina, for instance), can be considered dangerous.

\textbf{3.4 Human Rights violations and Justice in crisis}

\textit{Torture and human rights}

\textsuperscript{56} They did that by creating clandestine detention centers were kidnapped victims or \textquoteleft desperados\textquoteright (disappeared) were tortured and interrogated as well. See \textquoteleft Nunca Mas\textquoteright (Never Again) report: http://www.nuncamas.org

\textsuperscript{57} Wilson, Richard, In: Christie, Kenneth, 2000. p 133
http://site.ebrary.com/lib/linkoping/Doc?id=5001668&ppg=133
«Si al salir del cautiverio me hubieran preguntado: ¿te torturaron mucho?, les habría contestado: Sí, los tres meses sin parar.» (If when I went out of captivity they should ask me: did they torture you too much? I could say: yes, the three months interruptedly)

«Si esa pregunta me la formulan hoy les puedo decir que pronto cumple siete años de tortura» (If that question is made now, I can say that I still have seven years of torture) (Miguel D’Agostino - Legajo N° 3901)\(^ \text{58} \).

According to Humphrey, torture can be considered as a “particular contemporary expression of atrocity”, that includes: disappearance, torture, rape, mutilation, kidnapping, massacre, ethnic cleansing and genocide. When prisoners are tortured, this is done under a clandestine interrogation of prisoners with extreme cruelty with the purpose of jeopardizing death in order to find out confessions. Historically, torture was made publicly and was used by the state as a form of judicial punishment. The public were frightened by observing the victim’s detention, torture, confession and death.

Nowadays, however, the torture is made with a clandestine character hence victim’s agonies and confessions are only heard by their torturers, and if they die, their deaths are publicly unknown, except sometimes to close relatives. The torture of victims is generally about politically selected victims, as political symbols. They are selected as victims that belong to a specific category, such as political opposition group, ethnic minority, terrorist, subversives, women, etc. It usually occurs in a “state of emergency”- dictatorship, revolt, civil or even national war\(^ \text{59} \).

**Argentina**

In Argentina, people were terrorized and became a skeptical public, who stated that “sure people were disappearing”, that (por algo sera), “there must be a reason”, “they did something”\(^ \text{60} \).

As I pointed out before, the Universal Declaration of Human Rights (UDHR) was proclaimed at the United Nations in 1948 after the atrocities of the Second World War.

\(^{58}\) My translation : http://www.desaparecidos.org/arg/conadep/nuncamas/nuncamas.html

\(^{59}\) Humphrey, Michael, 2002, pp.26- 27

\(^{60}\) Ibid., pp.26- 27-28
The claims of the victims include not forgetting and to keep the historical and collective memory of what had happened alive. There, there was a promotion in different ways to symbolize and preserve in a vivid memory the traumatic experience. The common slogan in Argentina was: “Ni olvido ni perdon” (Neither oblivion, nor pardon).

“The second part of this slogan implied an ultimately lost battle against the state apparatus, which eventually pardoned the guilty and stopped the continuation of trials; the first part implied a social and cultural operation involving a symbolic power struggle of considerable magnitude. The moving idea is that only through remembering can avoidance of such violations be ensured as “if never again” could only be guaranteed by the constant remembrance of the terror experienced during the dictatorship.”

I will come to this idea later on, in section 4.2

What has been done in the country after President Raul Alfonsin was elected in 1983? World public opinion focused on his efforts to reveal the hidden story of the crimes of the so-called "dirty war." Alfonsin created the CONADEP (Argentina’s National Commission on Disappeared People), in defense of human rights. But after that, in response to energetic military protests, a general amnesty was adopted regarding accountability for the military for their past crimes; he promulgated the Laws of “Due Obedience” (Obediencia Debida) and “Full Stop” (Punto Final), which was like retracting what he did before. When those Laws were promulgated, they were incompatible with Argentina’s obligation to bring justice and to punish the perpetrators of gross violations of human rights. The Argentinean need to see justice was frustrated, as these Laws have been used to impede the investigation of thousands of cases of 'disappearances', torture and death committed between 1976 and 1983 when the military government was in power.

Organizations which seek for the defense of human rights in Argentina are not something new, although after the massive violence occurred during the 1970s claims regarding the violations of human rights became more constant. Therefore, APDH (Permanent Assembly for Human Rights), was created in late 1975, for instance.

The recent Argentine experience is certain to have great impact on the manner in which these issues are resolved. Since Nestor Kirchner was elected president in May

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61 Jelin, Elizabeth, 1994, p.39
2003, he has been addressing issues of justice for the violations committed 30 years ago. Therefore, his government is fighting to reverse the economic inequalities the country is living nowadays, trying to decrease the wide difference between social classes. We can say that nowadays there is a movement to end impunity for human rights abusers in Argentina.

The statement of Article 7 of the International Covenant on Civil and Political Rights in human rights states “No one shall be subject to cruel, inhuman, or degrading treatment or punishment“\(^{62}\). And as I said earlier about human rights, “the basic rights and freedoms to which all humans beings are considered to be entitle: the rights to life, liberty, freedom of thought and expression, and equal treatment before the law, among others. These rights represent entitlements of the individual or groups, as well as responsibilities of the individual and the government authorities“\(^{63}\).

The search for peace and justice is quite uncertain and discouraging in Argentina. In the mid-1970s the country was under a military regime, until 1983. At that time there was a massive violation of human rights, and an approximate 30,000 people “disappeared“\(^{64}\). Therefore there was urgency for the claim of truth and justice that was and is seeing through punishing the guilty.

Which human rights were violated? First of all, the right to life. Other examples of human rights violations were torture, execution, disappearance and imprisonment of those presumed as suspects.

Unfortunately, the lack of reparations from the perpetrators was seen as an obstacle to think about reconciliation, especially because perpetrators did not make public recognition of their wrongdoings. I will explain further the concept of Reconciliation in section 3.5

### 3.4.1 Public Testimony: Nunca Mas (Never Again) Report


\(^{63}\) See 2.2, Human Rights concept

\(^{64}\) See sections 3.4, 3.4.1 and 3.4.2
The *Nunca Mas* (Never Again) projects in Brazil, Argentina, Chile and Uruguay, seek to register into documentation and reports as an official memory of events and atrocities that occurred in those countries.

In Argentina the truth commission report *Nunca Mas* (Never Again) implied to be a public memory as well as the starting point for prosecution of the leaders of the Argentine junta.  

In *Nunca Mas* (Never Again), there is a detailed description by some survivors about what they lived through during their torture and/or imprisonment. Their narrations clearly show human rights abuses from the authorities at that time. To name the types of violations of human rights: kidnap, kidnap in front of children, torture in the victim’s home, generally in front of the children, as well.

In *Nunca Mas* (Never Again) report, there is an assumption that approximately 8,960 people are still disappeared. This number is evaluated according to the information received and comparisons made with figures given by national and international human rights organizations. However it is not a final number since CONADEP realizes that many cases of kidnapping have not been reported yet. Kidnapped people were taken to secret detention centers, where suffered all kinds of torture and humiliation. This report, also states that to get confessions the torture was done on children and old people in front of their families. “CONADEP has shown that as a result of these methods, prisoners were murdered, their identities concealed, and in many cases their bodies destroyed, to prevent subsequent identification”. In the midst of the victims are thousands who never had any relation with political activities but were nevertheless tortured because they opposed or question the military dictatorship, took part in union or student activities, were well-known intellectuals, or simply because they were relatives, friends, or names included in the address book of someone considered subversive. These atrocities were common practice, the normal methods used daily during the repression. CONADEP made several investigations in all the country and collected information from the Armed Forces, the Security Forces and other private and public organizations. Due to its investigations, CONADEP presented evidence before the courts, proving the existence of the main

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secret detention centers, giving a partial list of the disappeared seen alive in these centers and a list of members of the Armed Forces and Security Forces that the victims mentioned as responsible for the denounced crimes. Despite the destruction or confiscation of documentation providing details of the fate of the disappeared before government, “there is enough evidence to allow us to confirm that people who are still missing passed through the secret detention centres and that the truth as to their subsequent whereabouts will come out as progress is made in determining which individuals are responsible for the acts of repression committed”.

This is one of the several examples we can find in that report:

Jorge Berstrin (Legajo N° 2803) narrates:

“... March 1° 1977 I was in the house of a friend, in the city of General Roca, Black River (Rio Negro), when a group of armed men entered, kidnapped both, hood us and moved us into several cars until a near “detention center” to the city of Neuquén. A posteriori I could know why they kidnapped me; the niece of the head of personnel of the plant where I worked, who lived in Bahia Blanca, went to visit to General Roca and she stayed in the department in which we were kidnapped, in those days I had introduced her to the owner of the flat, my friend. The lady of Bahia Blanca that had in her notebook of addresses this department was kidnapped in that city, appearing soon after ”died in confrontation”. Few days after her detention, they kidnapped us, me, for the chance of being there. When realizing the mistake, we were liberated, first me and after five days my friend”.

To have a too common last name also implied the possibility to be victim of this terrible hunt. Raúl Rosemary (File N° 2590)

"The women that were kidnapped pregnant or they arrived from other centers to give to birth at the ESMA they represent one of the biggest pictures of horror, of superior cruelty that a person can plan and carry out; the cry of babies combined with torture screams."

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“…pulled up from their mothers at two or three days of being born, with the promise that they would be given to their relatives and that however they continue missing” (Nilda Noemí Actis Goretta - File Nº 6321).

3.5 Reconciliation through TRC*

**What is a Truth Commission?**

South Africa is an example of achieving justice through the creation of a Truth and Reconciliation Commission. It has become a model to be followed by other societies with democracy in transition. “Truth Commission is now the common name for an official investigative body that documents a pattern of past human rights abuses”\(^{67}\).

They indeed represent a new political response to a past of massive state violence. Their creation was due to the increase of national and international pressure, leading to an official acknowledgment of obligations under international human rights and humanitarian law, as well as the call to set up a genuine basis for democracy. We can say that Truth Commissions are organizations of investigation created with the purpose to help societies that had faced critical situations of political violence for instance, to deal with the past. Therefore, they will able to go through deep crisis and trauma generated as a result of the violence and to avoid that such events will be repeated again in the future. Truth Commissions look forward to know the causes of the brutality, identify the elements that are in conflict, investigate the facts of gross human rights violations and establish the correspondent legal responsibilities\(^{68}\).

The work of the Truth Commissions allow to identify the structures of terror, its branches in the different stages of the society (such as Army Forces, Police, Judicial Power, and Church) among other factors immersed in this problematic conflict. The investigation permits the possibility to emphasize the memory of the victims, intending a politics of *reparation* of the harm, preventing that those who participated in the human rights violations, continue to carry out public functions, for example\(^{69}\).

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* TRC Truth Commission  
\(^{67}\) Baker, Judith, 2001, p.309  
\(^{69}\) See more about reparations in 4.3.2
According to Priscilla Hayner, who is one of the foremost authorities in the area of truth commissions, TRC has the following four characteristics:

“(1) Truth commissions focus on the past; (2) investigate the pattern of abuses over a period of time, not a particular event; (3) is a temporary body that completes its work with an official report and (4) are officially sanctioned, in order to assure the accessibility of information and that recommendations of the concluding report are taken seriously.”

TRC would practice neither impunity nor vengeance. The Commission was determined to address both “victims” and “perpetrators”, not just one or the other.

There would not be blanket amnesty. It would not be a group amnesty. Every perpetrator would have to be identified individually, and would have to admit his or her truth before receiving amnesty from legal prosecution. Justice for the victim would be restorative: acknowledgments would be followed by reparations.

To sum up, individual amnesty for the perpetrator, truth for the society, and acknowledgments and reparations for the victims this was the pact built into the legislation that set up the TRC.

When talking about truth commissions it is essential to consider the historical and political context in which they are developed.

### 3.5.1 TRC in Argentina

In Argentina, for instance, the situation was under unfavorable conditions: after the dictatorship, the economy was in severe crisis, there was social mobilization and international pressure due to the military defeat in the Malvinas (Falkland Islands) and gross human rights violations.

In 1983, Raul Alfonsin assumed the Presidency of the country promising to investigate and present a report of the disappeared during the last dictatorship, creating for that purpose the CONADEP (Argentina’s National Commission on Disappeared People). But instead of creating a safe atmosphere, the military still exercised pressure,

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thus making it impossible to obtain trials and punishment. Therefore, some human rights
groups refused to collaborate with the CONADEP. The military power lead to the
promulgation of amnesty laws in 1986 and 1987, giving a path to impunity.

It is important to emphasize that the Argentinean commission stressed that
investigating the location of the disappeared would involve developing the democratic
system. But the report in Argentina did not make any reference to the legal framework
of the investigations, making victims not to trust them completely. The cause is that when
the names of the disappeared were made public in the report Nunca Mas (Never Again),
the names of the wrongdoers were not revealed. This was seen for the victims as not
having justice, as they stated that justice is not only tied to criminal punishments, but also
to public recognition.

Victims share the thought that peace, reconciliation and justice can not be
constructed under the basis of silence. Even though in the CONADEP report justice was
seen as recognition of the truth, all accepted that reconciliation is not possible unless the
perpetrators recognize, accept their responsibilities and are repentant for what they did.
This is one of the main causes why in Argentina it has not been possible to achieve
reconciliation yet. However, the investigations made by CONADEP are not in vain, will
help to continue elucidating the truth of what happened in Argentina and give some
proposals to achieve justice and lead, finally reconciliation.

3.5.2 South Africa’s TRC and Reconciliation

Background Information on South Africa

South Africa is not only distinguished by its wide and varied population in terms
of ethnicity, language, and religion. It also has to cope with the inheritance of apartheid’s
abuse. Moreover, the country is in the process of constitutional reorganization and
transformation that intends to build a nation and reach harmony in diversity.

71 Gerez Czitrom, Claudia, 2002, p.8
72 Nunca Mas (Never Again) report, see: http://www.nuncamas.org/
74 For more information in this issue, see section 4.2.1
75 Henrard, Kristin, 2002. p 39
It is however appropriate to give an overview of events, policies, and mechanisms that are related to the apartheid era in South Africa that explain reactions and attitudes of the Afrikaner, Colored, and Indian population groups. Historical events and regulations of the apartheid system have influenced in a negative way the concepts of group classification, group rights, ethnicity, race, minority rights, and self-determination as well as the institution of traditional leaders.76

Apartheid beginning can be posed after the 1948 election victory of the National Party (NP), which used that concept and program as the center of its election campaign. However, we can find that segregationist policies and attempts to categorize the South African population were already manifested centuries before, from the early roots of colonialism in South Africa77.

As stated above, the development of apartheid had its origin in the colonial era. The country was first inhabited by European colonists. In 1806 the colony was occupied basically by Great Britain. Within the segregation this system imposed, there was a developed of a distinct community, that later became the Afrikaner nation. Between 1815 and 1914 less than 4 per cent of the United Kingdom emigrants went to South Africa. However, there was a deep contribution in the country of the British in the administrative and commercial fields. Throughout the nineteenth century conflicts between the British imperial authorities and sections of the Afrikaner community seeking political independence was a constant theme. Thus “on a political level the establishment of the Union of South Africa in 1910 as a British dominion was viewed as a compromise between the two White ‘races’”78.

The Khoisan peoples, who came into contact with the colonists first, were the worst affected. The population suffered loss of lands and cattle as a result of the infringement of the White colonists, reducing most of its members to servitude on the newly established European owned farms.

By the early twentieth century, the indigenous population was deprived of land and livelihood, had been reduced into a small minority in many districts. Consequently,
there followed a long period of conflict from the 1770s to the 1870s, while colonial and local governments conquered the various indigenous tribal chiefs and Kingdoms of the subcontinent in a gradual way.79

In 1910 the Union of South Africa was established through the unification of four British colonies. At that time there were some five million people within the boundaries of the new dominion, of whom only one million were of accepted European origin. However, this one million were who controlled the government exercised exclusive political power in the following eighty years. The methods that they employed changed from the pragmatic segregationism of the pre-1948 period to the ideologically formed apartheid policies of the post-1948 era.

Racial issues are of vital importance in any discussion of population in South Africa, as membership of a particular racial or ethnic group has largely defined the individual’s opportunities and rights.80 Therefore throughout the colonial and Union periods was of great importance the issue of racial classification.

In the beginning the basic distinction was made between Christian and Heathen. Afterwards, this was modified to Free and Slave, then the terms ‘European’ and ‘Colored’ were implemented to denote the same division. Those divisions became more and more fragmented in the nineteenth century and even more elaborate classifications were used in the opinion polls, as well. For that reason, in the last Cape Colonial census in 1904 seven major categories were employed, fragmented into over forty subdivisions, based on physical and social characteristics. Roughly some four groups were distinguished in the Union period, namely: White or European, Native (later Bantu, Black or African), Colored or Mixed, and Asian.81

The White population of European origin constituted a minority throughout South Africa by 1951. The majority (approximately 55–60 per cent) of the European population was Afrikaans speaking, and between 1910 and 1994 all South African prime ministers and presidents were drawn from that community. On the contrary the cities, because of the pattern of colonial economic development, were largely dominated by English speakers until the 1950’s.

80 Ibid., p.30
81 Ibid., p.30
The Political Control

Before 1948 the political development of South Africa was complicated. The Dutch administered the Cape Colony. In the 1850s, the republics established in the Transvaal and Orange Free State by Afrikaner walkers, escaping from British rule in the 1830s, were recognized as autonomous states by Great Britain. Natal, however, was annexed to the Crown in 1843.

In 1910 the Union of South Africa was formed from the four self-governing colonies of the Cape, Natal, Transvaal and Orange Free State. New British dominion control was given in a government that was elected by the parliament. The parliament was controlled by the White population. Each province retained the form of franchise it had enjoyed in the late colonial period. In the Cape Province and Natal a qualified franchise open to all was adopted, subject to property and income qualifications. In the Cape Province there was a much more open approach with a substantial Colored and African vote. Taking into account the distribution of seats between the provinces, however, only White voters were counted constitutionally. In 1932 women gained the right to vote but were restricted to Whites only, thereby halving the impact of the Cape Colored vote. In 1936 Africans were removed from the voters’ roll and Senators appointed to oversee African interests. Thus the South African state was firmly administered according to laws which served the interests of the White population.

To sum up, South Africa was colonized by the English and Dutch in the seventeenth century. There was English domination of the Dutch descendents that upshot in new established colonies of Orange Free State and Transvaal. After getting their independence from England, the two groups held control until the 1940's, when the Afrikaner National Party was able to achieve a strong majority. Apartheid was created by strategists in the National Party with the purpose of reinforcing their control over the economic and social system. Originally, the aim of the apartheid was to maintain the domination of the white whilst expanding racial separation. In the early 60's, there was an

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82 Christopher, A. J., 2000, p. 30
execution of a plan of “Grand Apartheid”, where was stressed territorial separation and police repression\textsuperscript{83}.

Apartheid laws were ratified in 1948, thus, racial discrimination was institutionalized. All aspects of social life were affected by racial laws, that includes a prohibition of marriage among non-whites and whites, and the sanctioning of jobs for only “white” people. In 1950, according to the Population Registration Act, all South Africans were racially classified into one of three categories: white, black (African), or colored, that included main subgroups of Indians and Asians. That classification was based on appearance, social acceptance, and descent. If a person has one of her/his parents non-white, could not be considered white. To determine that a person was evidently white was based on “his habits, education, and speech and deportment and demeanor”. The classification of the citizenry was done by The Department of Home Affairs. All blacks were required to carry “pass books” that contained fingerprints, photo and information on access to non-black areas\textsuperscript{84}.

After, the Bantu Authorities Act established a basis for ethnic government in African reserves that were known as “homelands” that were independent states that each African was assigned by the government according to their origin. African political rights, including voting, were limited to the assigned homeland. The South African Parliament held complete domination over the homelands. The Africans could be citizens of the homeland, but by losing their citizenship in South Africa and any right of involvement with the South African Parliament. Since 1976 until 1981, were created four of these homelands, denationalizing nine million South Africans. Africans living in the homelands needed passports to enter South Africa: aliens in their own country\textsuperscript{85}.

In 1953, the Public Safety Act and the Criminal Law Amendment Act were passed, which empowered the government to declare strict states of emergency and increased penalties (fines, imprisonment and whippings) for protesting against or supporting the abolish of a law. When in 1960, a group of blacks in Sharpeville rejected to carry their documents; the government declared a state of emergency. The emergency

\textsuperscript{83} http://www-cs-students.stanford.edu/~cale/cs201/apartheid.hist.html
\textsuperscript{84} Ibid.
\textsuperscript{85} http://www-cs-students.stanford.edu/~cale/cs201/apartheid.hist.html
lasted for 156 days, 69 people died and 187 people were injured. However the white regime had no intention of changing the unfair laws of apartheid.

There were severe penalties imposed on political protests and even on non-violent protests. Thousands of individuals that were detained died commonly after terrible torture. Others were sentenced to death, banished, or imprisoned for life, like Nelson Mandela. The apartheid policy gave privileged treatment for whites\textsuperscript{86}.

In the case of South Africa, the TRC had a mandate to compile a representation that contains the gross human rights violations within South Africa, in the period between 1960 and 1994, and to explain why they happened. The aim of this compilation was to place the basis for a more just and humane society and to set off processes of reparation and reconciliation. However, the TRC extended impunity to most perpetrators of apartheid.

Restorative justice is possibly the best well-known alternative understandings of justice, since the TRC, under Chairman Desmond Tutu, explicitly advocated.

Andre du Toit, in \textit{Truth v Justice} argues that “many of the procedures of the TRC that give voice and public acknowledgment to victims suffering”, meet the demands of justice in the special circumstances of an emerging democracy\textsuperscript{87}.

\textsuperscript{86} http://www-cs-students.stanford.edu/~cale/cs201/apartheid.hist.html
\textsuperscript{87} Baker, Judith, 2001, p.313
Chapter 4

4. Implications of Reconciliation and the search for a moral society

What is Reconciliation? The English word reconciliation has its etymological roots in the Latin reconciliare: re-, “again” and “conciliare”, “making friendly”\(^88\).

In most Gemanic languages, such as the Swedish word försoning, which root is sonen, means “to settle strife”\(^89\). Hence, although the Latin and Germanic base words are different, the concept’s connotation is the same, that is the reestablishment of peace or friendship. The term reconciliation has also religious implications. In The Bible Reconciliation is used to describe the broken relationship between God and humankind owing to sin, with Jesus reestablishing conciliation between them through the sacrifice of his life: “That God was reconciling the world to himself in Christ, not counting men’s sins against them. And he has committed to us the message of reconciliation”\(^90\).

Hence, reconciliation is related with “peace building”, but additionally has different meanings regarding different people and societies. And, additionally the common aim of peace research is to contribute significantly to the reduction of latent and manifest, present and future, uses of violence within and between societies\(^91\).

There are many ideas of how to achieve justice through a process of reconciliation.

Individual and Collective levels

I would say that reconciliation does not hold the same meaning when we refer to the society and when we refer to the individual victims. Priscilla Hayner suggests that the purpose of a truth commission is to encourage reconciliation on a national level through speaking openly of a silenced and conflictive past in order to avoid suppressed conflicts and resentment between opposing parties. She stated that at the individual level topics such as healing and reconciliation are totally personal processes. Thus the two levels

\(^{89}\) Bonniers Svenska Ordbok (1994), article “försoning”. In: Lundwall, Karen, 2001, p.22
\(^{90}\) The Bible, 2.Corr.5:19 In : Lundwall, Karen, 2001, p.22
\(^{91}\) Wallensten, 1988, p.10. In: Ericson Maria, 2001, p.82
involved different processes but they strive towards a common goal: to facilitate coexistence (in society as well as inter and intra personally) not by forgetting or altruistic forgiveness, but by verbalizing and acknowledging a violent, conflictive past\textsuperscript{92}.

Regarding Truth and Reconciliation commissions, \textit{amnesty} plays a controversial and an important role as well. Often, Human Rights organizations plea for punitive or retributive justice which they hold as necessary to guarantee respect for the human dignity of the victims. Thus, “Amnesty International has been critical of pardons and amnesties, arguing that:

\begin{quote}
Impunity negates the values of truth and justice and leads to the occurrence of further violations\textsuperscript{93}.
\end{quote}

This thought has been a central one in Argentina, and was considered to be the solution, but in fact it did not work. Why? Because when the idea of restorative justice was proposed as an alternative to punitive justice, the aim was to restore justice and to restore the relationship between the parties involved. This was considered to be done through repentance and forgiveness. It is not enough to apologize though; the wrongdoer should also accept some responsibility, expressing regret and be aware of the harm done.

However, in Argentina this did not happen. On the contrary, non respect and rejection of responsibility were shown by the wrongdoers. Only one did acknowledge that he was wrong and showed repentance. This occurred in year 1995 when Captain Scilingo described in detail how political prisoners were thrown into the sea, naked and drugged, from planes. He was the only one who surprised the country by showing solidarity with the victims, stating that the dictatorship had violated military norms\textsuperscript{94}.

In the case of South Africa, TRC placed the yielding of amnesty within a structure of “restorative justice” which

\begin{quote}
...aims at the healing and the restoration of all concerned: of victims in the first place, but also of offenders, their families and the larger community\textsuperscript{95}.
\end{quote}

\begin{footnotes}
\textsuperscript{92} Hayner, 2001, p.155. In: Lundwall, K., 2001, p.25
\textsuperscript{93} Bronkhorst, 1995, p.100, In: Ericson Maria, 2001, p.25
\textsuperscript{94} Gerez Czitrom, Claudia, 2002, p.15
\textsuperscript{95} TRC Final Report, Vol. I, Ch 5, &82. In: Ericson Maria, 2001, p.26
\end{footnotes}
Thus, the aim of a transformation of the exiting society requires that the parties, both victims and perpetrators, should be able to create a new relation in the path of respect and shared values, as a starting point.

However, an adequate degree of shared moral values also needs to be established in order to reach a sense of justice.

In South Africa, Hugo van der Merwe pointed out at the importance of shared values or a “moral community” in order to achieve restorative justice:

“A fundamental condition for restorative justice is the existence of some common basis agreement regarding human values and unacceptable behaviour, i.e. what is a crime in the moral sense of the word. A restorative justice process requires that the perpetrator is able to comprehend that they did something wrong when they committed the offence, or that the justice process is able to give them this understanding of their own actions. The offenders must have the internal framework (and recognition of the humanity of the victim) to evoke a sense of shame. In a society where the conflict was largely between two sides who did not share the same culture, who have different understandings of justice, and a different vision of the future society that they want to build together, the prospects for restorative justice would appear quite slim.”

This idea is directly connected with the one that Rawls presents in his *Theory of Justice*: For Rawls, a society is well ordered when, first, its members know and agree to the same principles of social justice and, second, the basic institutions of society generally satisfy and are widely known to satisfy these principles. Thus, when a “consensus”, regarding Rawls “overlapping consensus”, fulfill reconciliation conditions, it generates moral support within citizens, and the disagreement they have over doctrinal, moral, religious and philosophical questions might be erased. I would say that the main problem Argentina has to reach justice and then reconciliation, is because of the disagreement regarding human values and the different understanding of what justice, peace, and a good society are for different sectors of the society.

Experiences are different in each society and the same event can also differ from every person’s perspective. But what is shared, as a basis of a moral system of values is what makes a society stronger and solidary. This is what Argentina lacks, this is what the country needs to reflect upon and develop further. How is justice value? The response

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might be in finding shared conceptions of ethical norms and legitimize traditional concept of justice, in connection to a cultural identity and community. Hence, to acknowledge the wrongs of the past, guides to acceptance, toleration and finally to reconciliation. Learning through the past makes it possible for citizens to move forward towards the future.

The question here is whether citizens who have been abused by authoritarian regimes are able to put the past behind them and reconcile themselves with those who oppressed them. The answer is not easy and the process of reconciliation is not simple, but it is possible. How? Only if the truth about past violations becomes public and acknowledged. As Hamber and Wilson put it:

“They national process of uncovering and remembering the past is said to allow the country to develop a common and shared memory, and in so doing create a sense of unity and reconciliation for its people. By having this shared memory of the past, and a common identity as traumatized people, the country can, at least theoretically, move on to a future in which the same mistakes will not be repeated.”

Thus, acceptance of the truth and respect might lead to reconciliation, being the path for a new and unified society.

4.1 Punishments or Reconciliation?

If everyone took an eye for an eye, the whole world would be blind.

Ghandi

My focus here is on punishment and reconciliation. These are the main points of the Ethical Dilemma: If we punish too much, there is no room for reconciliation and without it, a better and solidarity society is not feasible to achieve. But what is essential in order to finally attain Reconciliation as an alternative?

Victims’ responses to the harm done may be very different, from the desire of revenge, resentment and anger on one side, to forgiveness on the other. Others can also talk about the possibility of reconciliation.

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Some authors, like Robert Salomon, defend and argue that to feel resentment and desire of vengeance “provides us the insight that this world is unjust and something should be done about it”. According to him, that “desire of vengeance is the desire to pay back the offender, thereby putting the world in balance”\(^{98}\).

But, can we say that revenge is morally right? Revenge is used in order to mitigate the feelings of the victim, by making the offender suffer. An essential moral objection that can be raised is that using the suffering of a person to satisfy oneself is “morally objectionable in the sense that [it] fails to respect human worth and dignity”\(^{99}\). Hence, the wrongdoing is repeated.

The retributive theory of punishment is a legal one. It claims that the wrongdoer must pay a debt to the society, annulling a wrong, restoring a balance or re-establishing some kind of reciprocity. Besides that, punishment should go along with the wrongdoer’s reflection and understanding of what he did wrong and that it must not be repeated. In addition, it should provide the chance to remorse and repentance\(^{100}\).

Another moral message connected with punishment is the *vindication* of the victim. This means to show that the victim was not worthy to be treated in that way and had human dignity and, thus, deserved respect. There is a fundamental moral belief that to deliberately impose suffering to another person is wrong, but this does not mean that the punishment should be proportional to what was done by the wrongdoer. Otherwise, we are talking about ancient claims of *lex talionis* “an eye for an eye, a tooth for a tooth”. In this case we believe that too much punishment, that is not also the goal and the desire of victims, creates more violence and therefore is not a means to a good and peaceful society. It is true that punishment should be done, but not in the same degree as the harm that was done. The punishment only serves to balance that harm, to give a sense of justice to the community.

When the equilibrium between members of a community is broken, some people claim that punishment can restore that lost equilibrium that existed before in the community. To do that, it is necessary to identify first the harm done by the wrongdoers.

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\(^{98}\) Govier Trudy, 2002, p. 4

\(^{99}\) Govier Trudy, 2002, p. 11

\(^{100}\) Ibid. p. 18
Earlier I talked about revenge that is one way of damaged people’s response; now I will highlight another feeling, resentment and how overcoming those feelings might put a forgiving position into practice. To forgive is to triumph over the anger and resentment experienced in reaction to that harm. Hence, it is to re-build the relation with the wrongdoer on a new basis. However, we must be aware that to forgive is not a result, it is a process. Furthermore, we must address that forgiveness is not incompatible with punishment; what forgiveness rules out is continuing resentment and hostility against the offender 101.

The scenario here is the following: a person harmed another, thus the two persons are morally opposed. If the wrongdoer does not feel any repentance or guilt for what he did, and also denies his responsibility for what he did wrong, that opposition will continue. On the contrary, when the wrongdoer asks for forgiveness, as in this case, he acknowledges that he did something wrong. In expressing regret, the wrongdoer demonstrates repentance and desire to rebuild the relation, indeed. From this idea, we can then talk about Reconciliation. What is Reconciliation? Basically, it is when two people, countries, etc., were in opposition with each other and can, after that, have a peaceful relationship again.

To have reconciliation the injured person should trust and forgive the offender. However, if we will take into account the enormous suffering of so many people during and in the upshot of war and genocide, it can feel inappropriate and even insulting to the victim to talk about reconciliation in a first instance 102.

But reconciliation and forgiveness sometimes do not go together. For instance if offenders, as I stated above, do not feel remorse for what they did and also do not acknowledge that what they did was wrong, then victims may forgive but cannot reconcile with them. This is because reconciliation entails more than a non-violent co-existence. This attainment is based on recognition of the harm done, which might be expressed in public confessions, followed by repentance, restitution, forgiveness by victims, and possibly attitudes of warm acceptance 103.

101 Govier Trudy, 2002, p.175
102 Lundwall, Karen, 2001, p.21
103 Govier Trudy, 2002, p.144
Recently there is a growing discourse about the idea that reconciliation concerns the prevention of further conflicts. Some studies demonstrate that societies that have undergone war build up something like a war-spiral (As we saw earlier, in the case of Argentina, for instance, there was a repeating cycle of coups)\textsuperscript{104}, while countries that resolve conflicts peacefully are inclined to continue living in peace\textsuperscript{105}. How to break those “cycles” of repeating conflict? By investigating crimes against human rights, would be an essential first step to take, then, allowing victims to tell and share their stories and experiences can be considered as helpful for them and to the whole society. The first truth commission that received international attention was the case of Argentina in year 1984, after that; there was an increase in the number of truth commissions in other countries as well.

\textbf{4.2. Why is not good to forget? The importance of the “Memory”}

As stated before, to forgive is to overcome resentment and anger, seeing the offender as a person who can potentially be better. A common mistake is to directly relate forgive with forget, as if to forgive involves forgetting the offense. Why severe wrongs should not be forgotten? Because to do so is to deny what happened. Moreover, it is disrespectful of the victims’ suffering and of their memories. Such misleading is offensive in the way it weakens the seriousness of the injury, and it is risky because repressing strong emotions increases the danger that similar wrongs might happen in the future\textsuperscript{106}.

The \textit{sine qua non} is the way a victim remembers what happened. That should be in a non resentful way; otherwise the memories encourage revenge and anger. Hence, what matters is how events are remembered, not merely to remember. To forgive is to remember in a constructive way. One clear example of forgiveness in that way is Nelson Mandela. He had the capacity to expand forgiveness to the South African whites who were responsible for his 28 years in prison. After winning his freedom, Mandela made it clear that he did not resent or hate white South Africans in general. He expressed no

\textsuperscript{104} See further information in section 3.1
\textsuperscript{105} Lundwall, Karen, 2001, p.21
\textsuperscript{106} Govier Trudy, 2002, p.59-60.
unkindness or desire of revenge, and sought to work with all colored people to build in South Africa a “rainbow nation”, in which citizenship, opportunity and well-being would not be a function of race. He is seen as a model of forward-looking forgiveness. This does not mean that he forget what he had lived, though. Forgiving is compatible with remembering, but not with continuing anger and resentment. When we forgive we gain a new perspective that liberates us from unhealthy resentment that ties us to the past.\(^{107}\)

Now, I will try to describe and explain the historical memory of repression in the process of democracy. The main point here is that memory is essential for the development of identities. How to reconstruct the past within historical memory involves a deep analysis of the process of remembering and forgetting in the society as well, the construction of the searching for meanings of what happened and of the significance it has nowadays.

However, is important to highlight how to incorporate these new meanings among people who have different opinions of the event as well. For some activists in Argentina, the slogan was: "Remember! So as not to repeat! It is good to recognize is that there are several versions of what had happened, thus it is not easy to describe the “truth”. The symbolic inauguration of the “Nunca Mas” Museum of Memory marks a milestone in Argentina’s history.

Another way of maintaining the memory was done by former President Nestor Kichner, who overcame some resistance in Congress, succeeding earlier this month in making March 24 a permanent holiday, to be called the National Day of Memory for Truth and Justice.\(^{108}\)

All those matters are referring to a collective memory. This means the socially accepted understanding of the past. To understand connotes to center on memories of past events that are somehow shared by individuals of a certain society. Thus, when a collective memory is established, it becomes difficult for people to reject what happened in the past. We should pay attention to the posterior process of transmission of memories to future generations, taking into account that they will also have their own interpretations and reflections upon it. This transmission of the memory also allows

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\(^{107}\) Ibid. p.60  
creating new readings of the past. Therefore, to legitimize the discourse leads to establish new shared values and new identities in the community, and this is undoubtedly a new starting point.

### 4.2.1. Breaking the culture of silence

One way to keep memory alive is to let survivors, narrate what they have lived through; telling stories also creates a new space to share with others their experiences, revealing their fears and emotions.

We can find several psychological reactions to trauma that generate obstacles to dialogue and to relationship building. The way the victims deal with these experiences also affects their process of recovery from the trauma, the need for meaning and acknowledgment, and the posterior relation with the perpetrators.

The fact that victims can make their stories public provides them the strength to work and go through the pain and have a better understanding of what had happened. To do that they need to have a safe space in which they feel they are somehow embraced. It is important to stress that victims when talking about their experiences are in a position of vulnerability, which is why it is important to take into consideration the necessity of professional support in that situation, such as psychologists, community groups, religious structures or relatives. In doing this, the victims can slowly overcome dealing with the past, expressing their emotions, in a therapeutic setting, for instance. Hence, as Ericson Maria pointed out:

> …finding out the truth about what had happened to them or their loved ones, and about who was responsible was seen as another essential part in being able to construct a fuller story\textsuperscript{109}.

Moreover, this process of self-discovery and of discovery of “the other” was seen as a necessary basis of reconciliation\textsuperscript{110}.

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\textsuperscript{109} Ericson Maria, 2001, p.346  
\textsuperscript{110} Ibid. p.341.
4.3 Supporting victims and Reparations

4.3.1 Psychological aspects of the trauma

After a conflict with the dimensions we have seen all through the thesis, it can be too painful and terrifying for the mind of the victim, so that one of the effects is to deny the traumatic experience. The mind helps protect itself by blocking what has happened out of consciousness. In psychoanalysis, this is called repression mechanism.

This is not only accurate for victims, but also for the perpetrators and witnesses. The perpetrators have an interest in denying the violence to avoid responsibility, guilt, shame or perhaps, prosecution. For witnesses, the easiest strategy is to tackle what has occurred with silence.

Moreover, it is also harrowing for the victims to put their experiences in words. The posttraumatic experience (that is commonly called PTSD - Post Traumatic Stress Disorder) is denied during some periods, and only reappears when the mind has strategies to handle what has occurred.

The individual truth telling that the Truth Commissions highlight is seen as a medium to “cure” or heal a nation. This truth of individual suffering is proposed as a starting place for rewriting national history and bringing back a moral community.\footnote{Humphrey, Michael, 2002 , p.112}

As I said above, if the crude reality is too traumatic to express through words, the so expected ‘truth’ might sometimes not be accessible so easily because of psychological avoidance. To remember is often evaded as a mind protection against experiencing pain over again.

When a person is in a stressful situation, with i.e. fear, anguish, etc., is usual to build a “shield”, a defense mechanism that protects him/her from this situation, increasing the sensation of security. The defense mechanisms are unconscious resources that people use to face situations of anxiety, fear, and insecurity, for instance, with the objective that these situations shall not harm them.

The mind strategies for that in psychoanalysis are various we have for instance what is called intellectualization, rationalization, object splitting (negative experiences
and affects are projected into the bad object, positive ones into the good object), projection (those feelings and desires ignored in the self are expelled and transfer to another person) and reparation (the repair of an internal object which has slight connection to the external world) as a few examples of them\textsuperscript{112}.

The intellectualization consists on looking for a sophisticated language to mark differences with the rest of people. It is frequent among intellectual people. In the rationalization, the person gives himself explanations that are not true, but they serve to convince him/her of something that feels good and to avoid what creates anxiety, and that otherwise might be seriously intolerable and irrational.

It is of great importance to develop strategies to help cope with and heal psychological wounds after trauma in order to allow for life to continue, or otherwise the trauma may become cemented in physical and mental disorder. Some important goals of psychological recovery from trauma are restoring the person’s sense of security, control, meaning, dignity and trust. Furthermore, the narrative testimony entails individual recovery of memory about the past that helps to re-establish self-identity. When personal suffering is put into words, it is possible to establish different meanings, to give it a new significance, becoming this way socially embedded. Thus, we can say the TRC not only helps individuals in their psychological recovery after a conflict. The idea of reconciliation is also politically focused on the social recovery of the victim with the intention of the whole national reconstitution.

4.3.2 Reparations

We should differentiate reparation in the form that justice takes in legal systems and moral theories. “Positive justice” consists of rights and duties that belong to individuals or groups that they obtain throughout contracts, treaties or other historical acts. We should discern it from retributive justice which is related with punishments of wrongdoers for violations of requirements of positive justice, “so far as these are embodied in law; reparative justice with restitution or recompense for violations\textsuperscript{113}.”

\textsuperscript{112} Ibid. p.112
\textsuperscript{113} Thompson, J., 2002, p.38-39
We can say that reparative justice has received little interest as its purposes seem to be basic and uncontroversial. When talking about reparative justice, it is important to pay attention to: first, if a person’s or community rights are violated, or his/her wellbeing are unjustly damaged, then reparative justice requires that the injustice is sorted out. According to Howard Mc Gary, the reparation’s argument depends upon identifying the wronged party and the wrongdoer. A principle of reparation is designed to rectify violations of people’s rights\textsuperscript{114}.

For John Locke and other liberal political theorists to deny a person’s right to reparation amounts to a refusal to recognize the full moral status of the person. According to Lockeans, a political morality is rights-based and the proper role of the legitimate state is to protect rights and address rights violations. Locke did not believe that the state should use its coercive powers to promote social utility if this involved violating people’s rights\textsuperscript{115}.

A duty of reparations has two dimensions: a material that is principally symbolic and scarcely compensate for loss and injury, and a psychological dimension. Both are important, but I wish to explore why reparations are very important and necessary. According to Mac Gary, if reparations are appropriately considered, they entail re-examination, which involves the victims to examine their victimization. The wrongdoers cope with what they have done, and the victims and the wrongdoers explore their relationship with one another. In a comparable approach, when a wrongdoer shows that he or she can be made aware of the consequences of his wrongdoing, this helps to make reconciliation possible. Reconciliation requires that the wronged and the wrongdoer be able to interact as moral equals and to be as completely informed as is possible\textsuperscript{116}.

According to Thompson, there are two discourses regarding responses to wrongdoing. The first talks about rights and obligations, restoration and compensation. The second is concerned with forgiveness and reconciliation. Both discourses are concerned with past injustices, whether historical or more recent, but the first one, reparation as restoration, would be seen as “backward-looking” in the sense that only looks for reparation to restore the victim to his previous position. On the contrary,

\textsuperscript{114} Mac Gary, Howard, 2002, p.99
\textsuperscript{116} Mac Gary, Howard, 2002, p.103
reconciliatory reparation is “forward-looking”, in the sense that it aims to achieve a good outcome now or in the future.  

Concerning this, restorative reparation is similar to the retributive theory of punishment, which claims that wrongdoers should be punished according to the nature and cruelty of their crime, while reconciliatory reparation holds that punishment should aim to produce good effects for society. Restoration simply provides the victim with property, money or new opportunities, but it does not restore the moral equilibrium. Reconciliation, as we saw above, requires obligation of the wrongdoer to be willing and able to engage in the act of reconciliation. To do that, he or she must acknowledge and make public that he or she did wrong. Thus, restoration in itself is not enough to achieve reparation, because if the parties remain unreconciled, the process is not complete.

\[^{117}\text{Thompson, J., 2002, pp., 47-48}\]

\[^{118}\text{Thompson, J., 2002, p.48}\]
Chapter 5

5. Conclusions and final remarks

After a conflict or war, a community remains devastated because of the consequences that entails.

I argue throughout the thesis that in a just society, all citizens have equal (fundamental) rights and that Human Rights are such fundamental rights. We saw that the military regime in Argentina violated human rights and that by violating rights and also allowing such violations they made the society unjust. Argentina after the dictatorship (or any other country after a conflict, such as the South Africa case I also present here), needs to re-establish justice.

Although my analysis focuses mainly on Argentina, I do not disregard the option of doing the same analysis in other countries. Consequently, what to do about the injustices in the shape of human rights violations that took place during the dictatorship/conflict? We noticed that to simply try to forget evidently does not work. What we have as alternatives are the following: retribution, reparation and reconciliation, and it seem that while they are not the same thing, they do go together. Forgiving is not the same as forgetting, and is necessary to remember in order to forgive. I also highlight that shared values can result from a process of reconciliation and that these can be considered as the building blocks for restoring justice.

Experiences of the magnitude of the conflicts we can see through history and the ones that are analyzed in this paper can result in drastic changes among people’s lives. Thus, the conditions or requirements that are necessary in order to achieve justice, remain in some places i.e. Argentina, uncertain.

To a great extent, the wars have demonstrated to us the immense cruelty that can occur between people. The human rights violations and the utilizations of amnesties, demonstrate that trying to forget is not a viable alternative that also lacks the previous moral steps (public recognition of the harm done, remorse, for instance) that are necessary to start talking about reconciliation.
We saw that the case of Argentina has a long way to go through before talking about reaching justice through reconciliation, and we compared it with South Africa that have had further achievements regarding moral values consensus and reconciliation.

As I argued before, it is important to achieve justice because then members of a certain community will be able to interact in the present with common shared values and thus, to deal with the past.

Furthermore, all the societies are committed to work for justice in the best way. But how to stop the conflicts from reappearing in a cyclic fashion? The meaning of shared values and shared national identity will help to accomplish a “consensus” among citizens.

'If a reasonably just Society of Peoples whose members subordinate their power to reasonable aims is not possible...one might ask, with Kant, whether it is worthwhile for human beings to live on the earth.' J. Rawls
Literature


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