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Memo

The Politics of Transitional Justice in Argentina: 1983-2008

This year marks 25 years since the transition to democracy in Argentina. The paper discusses the ways in which the politics surrounding the question of how to deal with past human rights abuses has evolved in Argentina since the transition to democratic rule in 1983. The Argentine experience is important, as the country had to struggle with the moral and political dilemmas of justice and order in the context of rapid and uncertain political change well before the establishment of transitional justice as a distinct academic domain and field of policy expertise. An understanding of the specific forms that the politics of transitional justice in Argentina have taken therefore offers insights into the opportunities of and limits to approaches to transitional justice more generally. The bulk of the paper therefore is structured around a number of important themes deriving from the Argentine experience that are useful when thinking about transitional justice in other parts of the world.

First, however, the main political developments and trends of Argentine transitional justice since the transition to democracy in the country in 1983 are sketched. It is argued that the Argentine experience with transitional justice could be usefully divided into three different time periods: (1) the immediate transition to democracy under the first civilian government in the 1980s; (2) what could be seen as an impasse of transitional justice in the 1990s under the second civilian government; and (3) the current period following the recent overturn of amnesty laws and reopening of human rights trials of alleged violators of human rights under the military regime. In addition to locating the key events and trends of transitional justice in their appropriate historical context, this section highlights what are complex, dynamic, open-ended and contested political processes of political change and continuity in Argentina.

The second main section of this paper then discusses the various themes of transitional justice that the Argentine experience highlights. I outline them here in summary form:

(1) The crucial issue of Time – fully recognizing the inherent paradox of discussing *transitional* justice over the course of twenty-five years. From the perspective of justice, when does the transition end? The attempt to answer this is highly tentative, but it notes that the passing of time shifts what is politically possible and morally acceptable. Moreover, time often brings about unexpected and unintended consequences on decisions made and not made, of paths taken and not taken. The importance here of what Bernard Williams once termed moral luck is emphasised. In sum, transitional justice is quite clearly a moving target.

(2) Transitional justice seen as process rather than a set of outcomes. I advance here a perspective on transitional justice – echoing a persuasive account of democratization – that stresses not a predetermined set of outcomes, not just as a feasible equilibrium between political contingencies and moral principles but a socially desirable process towards an imaginary future.

(3) The importance of firmly bringing politics and history into the study of transitional justice. I note here the tendency of much contemporary writing on transitional justice that offers a perspective on its processes that pushes politics to the margins of the discussion, and that, moreover, tends not to pay sufficient attention to historical processes (of problematic state formation, political violence, external vulnerabilities, contested national and ethnic identities, repressive and exclusionary political practices and ideologies, etc.). This takes the question of transition from what to what seriously and the main argument here is that the political logic and dynamics of transition from authoritarian rule to democracy (democratisation) are distinct from those that pertain to transition from open armed conflict (post-conflict reconstruction).

(4) Intimately related to the previous point, it is argued that historical patterns, trends and structures are important, but political agency and visions do matter. In terms of the former, it is noted that many actors are involved in processes of transitional justice. And, yes, civil society activity and activism is important, but the Argentine experience also demonstrates that this is not sufficient. For advances to take place, there also need to be considerable support among political elites, and in particular by the State. In terms of political visions of transitional justice there are some hard questions that need to be addressed: what objectives do and should transitional justice mechanisms accomplish and for whom? What is it for, what social and political functions should the particular approach adopted fulfil and what actors are – and should be – the beneficiaries? Does the specific mechanism actually deliver what it is set out to deliver? Any answer to these questions tends to be tentative and reinforces the perspective on transitional justice advanced above – under (2).

(5) Although the stated objective of transitional justice policies is to strengthen democratic institutions, the Argentine experience demonstrates that the institutional implications of such policies are often ambiguous. For example, what are the institutional implications of court prosecutions for a judiciary that may already be under considerable institutional strain and political pressure? That is, do the policies on transitional justice strengthen or debilitate public and democratic institutions?

(6) Emotions and contestation. By the very nature of its subject matter, transitional justice provokes, is sustained and shaped by a considerable emotive component. If one recognizes this to be the case, then one cannot automatically assume behaviour and expectations to strictly conform with rationalistic models and explanations of politics. Again, in the Argentine case, individual and group emotions with regards to prosecutions and punishment are very much part of the discussion surrounding transitional justice. Also, transitional justice is inherently conflictive and thus one cannot expect consensus on even the most fundamental issues involved.

(7) Finally, the shifting balance between domestically driven processes of political change and international pressures, norms and opportunity structures. The relative importance of international influences on Argentine processes of transitional justice has considerably grown over time. In the early period of the transition to democracy, international norms on impunity for example, were poorly defined, and the body of international human rights jurisprudence on amnesty laws was yet to be developed. However, as we saw in the case of the overturning of the amnesty laws in Argentina by the Supreme Court in 2005, the balance has shifted, and there is now considerably

greater reference to international norms. And the use of international human rights institutions by domestic actors in Argentina has similarly expanded and diversified. These trends generally reflect the increasing transnationalisation of processes of transitional justice that are even more pronounced in other parts of the world.